

IC 12-10-13

Chapter 13. Long Term Care Ombudsman Program

IC 12-10-13-1 Repealed

(Repealed by P.L.139-1993, SEC.24.)

IC 12-10-13-2

Repealed

(Repealed by P.L.139-1993, SEC.24.)

IC 12-10-13-3

Home care services

Sec. 3. As used in this chapter, "home care services" means in-home services funded through any of the following:

- (1) The office of Medicaid policy and planning.
- (2) A county office.
- (3) The division.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.5; P.L.4-1993, SEC.39; P.L.5-1993, SEC.52.

IC 12-10-13-3.3

Legal representative

Sec. 3.3. As used in this chapter, "legal representative" means:

- (1) a guardian;
- (2) a health care representative acting under IC 16-36-1;
- (3) an attorney-in-fact for health care appointed under IC 30-5-5-16;
- (4) an attorney-in-fact appointed under IC 30-5-5 who does not hold health care powers; or
- (5) the personal representative of the estate;

of a resident of a long term facility or client of home care services.

As added by P.L.139-1993, SEC.6. Amended by P.L.1-1994, SEC.54.

IC 12-10-13-3.6

Long term care facility

Sec. 3.6. As used in this chapter, "long term care facility" means either of the following:

- (1) A facility licensed under or subject to IC 16-28-2.
- (2) An adult care home.

As added by P.L.139-1993, SEC.7. Amended by P.L.2-1995, SEC.47.

IC 12-10-13-4

Office

Sec. 4. As used in this chapter, "office" refers to the long term care ombudsman office established by this chapter. The term includes individuals approved to act in the capacity of ombudsmen by the long term care ombudsmen office.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.8.

IC 12-10-13-4.5

Ombudsman

Sec. 4.5. As used in this chapter, "ombudsman" means an employee of the office or an individual approved by the office to investigate and resolve complaints and concerns regarding the health, safety, welfare, or rights of residents or clients under 42 U.S.C. 3027 and this chapter.

As added by P.L.139-1993, SEC.9.

IC 12-10-13-5**Repealed**

(Repealed by P.L.139-1993, SEC.24.)

IC 12-10-13-6**State ombudsman**

Sec. 6. As used in this chapter, "state ombudsman" refers to the individual who directs the long term care ombudsman office.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.10.

IC 12-10-13-7**Establishment of office**

Sec. 7. The division shall establish the long term care ombudsman office in compliance with 42 U.S.C. 3027.

As added by P.L.2-1992, SEC.4.

IC 12-10-13-8**State ombudsman; appointment**

Sec. 8. Subject to sections 10 through 12 of this chapter, the director of the division shall appoint the state long term care ombudsman to direct the office on a full-time basis.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.11.

IC 12-10-13-9**Vacancy**

Sec. 9. The director shall appoint an acting state ombudsman within thirty (30) days of a vacancy in the position of state ombudsman. The acting state ombudsman has the powers and duties of the state ombudsman.

As added by P.L.2-1992, SEC.4.

IC 12-10-13-10**Qualifications**

Sec. 10. The state ombudsman must have familiarity with the following:

- (1) Gerontology or long term care.
- (2) The legal system.
- (3) Dispute or problem resolution techniques, including investigation, mediation, and negotiation.

As added by P.L.2-1992, SEC.4.

IC 12-10-13-11

State ombudsman; eligibility; employment by health facility or home care service organization

Sec. 11. The director may not appoint as state ombudsman an individual who has been employed by a long term care facility or a home care service organization within one (1) year preceding the director's proposed appointment.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.12.

IC 12-10-13-12

State ombudsman; eligibility; pecuniary interest in health facility or home care service organization

Sec. 12. The state ombudsman and a member of the state ombudsman's immediate family may not have had a pecuniary interest in a long term care facility or a home care service organization within three (3) years preceding the director's proposed appointment.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.13.

IC 12-10-13-13

Technical experts; staff

Sec. 13. The state ombudsman may employ technical experts and other employees to carry out the purposes of the office.

As added by P.L.2-1992, SEC.4.

IC 12-10-13-14

Investigation and resolution of complaints and concerns

Sec. 14. (a) The office shall receive, investigate, and attempt to resolve complaints and concerns that:

- (1) are made by or on behalf of a patient, resident, or client of a long term care facility or a home care service, except for an individual with a developmental disability who is receiving waiver services; and
- (2) involve the health, safety, welfare, or rights of a resident or client.

(b) At the conclusion of an investigation of a complaint, the office shall report the office's findings to the complainant.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.14; P.L.272-1999, SEC.32.

IC 12-10-13-15

Report of findings

Sec. 15. At the conclusion of an investigation of a complaint, the office shall report the office's findings to the complainant.

As added by P.L.2-1992, SEC.4.

IC 12-10-13-16

Decision not to investigate; notice

Sec. 16. If the office does not investigate a complaint, the office shall notify the complainant of the decision not to investigate and the reasons for the decision.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.15.

IC 12-10-13-16.2

Ombudsman; access to persons, places, records, and other information

Sec. 16.2. In accordance with this chapter, an ombudsman must be provided access to the following:

- (1) Long term care facilities, entities that provide home care services, and the residents or clients of the long term care facilities or entities that provide home care services.
- (2) As provided in section 16.4 of this chapter, a resident's or client's medical, financial, and social records.
- (3) If the resident or client is incapable of giving consent, as determined by the attending physician or as otherwise determined under state law, the name, address, and telephone number of the resident's or client's legal representative.

As added by P.L.139-1993, SEC.16.

IC 12-10-13-16.4

Ombudsman; access to medical, financial, and social records of resident or client; consent

Sec. 16.4. (a) An ombudsman must be provided access to a resident's or client's medical, financial, and social records. Except as provided in subsections (c) and (d), the ombudsman must obtain consent under subsection (b) before having access to the records.

(b) Consent to have access to a resident's or client's medical, financial, and social records shall be given in one (1) of the following forms:

- (1) In writing by the resident or client.
- (2) Orally by the resident or client in the presence of a witness.
- (3) In writing by the legal representative of the resident or client if:
 - (A) the resident or client is incapable of giving consent, as determined by the attending physician or as otherwise determined under state law; and
 - (B) the legal representative has the authority to give consent.

(c) If consent to have access to a resident's or client's medical, financial, and social records cannot be obtained under subsection (b), an ombudsman may inspect the records of a resident or client if the resident or client is incapable of giving consent, as determined by the attending physician or as otherwise determined under state law, and:

- (1) has no legal representative;
- (2) has a legal representative but the legal representative cannot be contacted within three (3) days; or
- (3) has a legal representative but the legal representative does not have the authority to give consent to have access to the records.

(d) If an ombudsman has:

- (1) been denied access to a resident's or client's medical, financial, and social records by the resident's or client's legal

representative;
(2) reasonable cause to believe that the resident's or client's legal representative is not acting in the best interests of the resident or client; and
(3) received written approval from the state ombudsman;
the ombudsman may inspect the records of the resident or client.
As added by P.L.139-1993, SEC.17.

IC 12-10-13-16.5

Ombudsman; access to records of long term care facility or home care service

Sec. 16.5. An ombudsman shall be given appropriate access to the records of a long term care facility or home care service.
As added by P.L.139-1993, SEC.18.

IC 12-10-13-16.6

Ombudsman; access to records of state or local government agency or entity

Sec. 16.6. A state or local government agency or entity that has records that are relevant to a complaint or an investigation conducted by an ombudsman shall provide the ombudsman with access to the records.
As added by P.L.139-1993, SEC.19.

IC 12-10-13-16.7

Long term care facility, home care service, or employee; disclosure of records; immunity from liability

Sec. 16.7. A long term care facility or home care service or an employee of a long term care facility or home care service is immune from:
(1) civil or criminal liability; and
(2) actions taken under a professional disciplinary procedure; for the release or disclosure of records to an ombudsman under this chapter.
As added by P.L.139-1993, SEC.20.

IC 12-10-13-16.8

Coordination among government agencies; toll free telephone number for reporting problems; nondisclosure of identity of complainant, resident, or client

Sec. 16.8. The office shall do the following:
(1) Promote effective coordination between the office and the following:
(A) Programs that provide legal services for the elderly.
(B) The adult protective services program.
(C) The attorney general's division of Medicaid fraud.
(D) The state department of health.
(E) Indiana protection and advocacy services.
(2) Establish a statewide toll free telephone line to receive reports of problems about long term care facilities or home care

services.

(3) Ensure that the identity of a complainant, resident, or client will not be disclosed without:

(A) the complainant's, resident's, or client's written consent;

or

(B) a court order.

As added by P.L.139-1993, SEC.21.

IC 12-10-13-17

Rules

Sec. 17. The director of the division shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

As added by P.L.2-1992, SEC.4. Amended by P.L.2-1993, SEC.86; P.L.139-1993, SEC.22.

IC 12-10-13-18

Civil immunity

Sec. 18. A representative of the office is not civilly liable for the good faith performance of official duties.

As added by P.L.2-1992, SEC.4.

IC 12-10-13-19

Annual report; distribution

Sec. 19. (a) The office shall prepare a report each year on the operations of the office.

(b) A copy of the report shall be provided to the following:

(1) The governor.

(2) The general assembly. The report must be in an electronic format under IC 5-14-6.

(3) The division.

(4) The federal Commissioner on Aging.

(5) Each area agency on aging.

(6) The state department of health.

As added by P.L.2-1992, SEC.4. Amended by P.L.28-2004, SEC.93.

IC 12-10-13-20

Violations

Sec. 20. A person who:

(1) intentionally prevents the work of the office;

(2) knowingly offers compensation to the office in an effort to affect the outcome of an investigation or a potential investigation; or

(3) retaliates against a resident, a client, an employee, or another person who files a complaint or provides information to the office;

commits a Class B misdemeanor.

As added by P.L.2-1992, SEC.4. Amended by P.L.139-1993, SEC.23.